

RESOLUTION NO. 5568

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN KYRENE ELEMENTARY SCHOOL DISTRICT NO. 28 (“DISTRICT”) AND THE CITY OF CHANDLER FOR THE SHARED USE OF CITY AND DISTRICT PROPERTY.

WHEREAS, the governing bodies of the City and District are mutually interested in an adequate program of educational and leisure related activities which can best serve the citizens of Chandler most effectively and economically; and

WHEREAS, full cooperation between the City and District is necessary to achieve the best service with the least possible expenditure of public funds; and

WHEREAS, the City and District wish to enter into an agreement for the continued operation and use of four (4) lighted ball fields on property owned by the District and known as Kyrene Aprende Middle School, and the field lights which are owned by the City; and

WHEREAS, the City and District wish to enter into an agreement for the use of District facilities and City facilities; and

WHEREAS, the City and District are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers pursuant to A.R.S. §11-951 et seq.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Chandler, Arizona, as follows:

Section 1. Approves the Intergovernmental Agreement between the City of Chandler and the District.

Section 2. Authorizes the Mayor to sign the Intergovernmental Agreement.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this ____ day of April, 2022.

ATTEST:

CITY CLERK

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 5568 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the ____ day of April, 2022, and that a quorum was present thereat.

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF CHANDLER AND
KYRENE ELEMENTARY SCHOOL DISTRICT NO. 28**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into this _____ day of _____, 2022, by and between the CITY OF CHANDLER an Arizona municipal corporation ("City"), and KYRENE ELEMENTARY SCHOOL DISTRICT NO. 28, a political subdivision of the State of Arizona ("District"), to provide for the shared use of City and District property on the terms and conditions herein stated. City and District are referred to collectively in this Agreement as "Parties" and each may be referred to individually as a "Party."

RECITALS

- A. The governing bodies of City and District are mutually interested in an adequate program of educational and leisure related activities which can best serve the citizens of Chandler most effectively and economically;
- B. Full cooperation between City and District is necessary to achieve the best service with the least possible expenditure of public funds;
- C. City and District wish to enter into an agreement for the continued operation and use of four lighted ball fields (the "Ball Fields") on property owned by District and known as Kyrene Aprende Middle School, and the field lights which are owned by the City;
- D. City and District wish to enter into an agreement for the use of District facilities and City Facilities; and
- E. District and City are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers pursuant to A.R.S. §§ 11-951 et seq.

AGREEMENT

- 1. Mutual Cooperation. District agrees to make available, except as otherwise provided in this Agreement at no charge to City, those District facilities within the City of Chandler limits that can be used for City's recreational programs. City will make available, except as otherwise provided in this Agreement at no charge to District, certain park and aquatic facilities to District schools within the City of Chandler limits that can be used for educational or athletic programs.
- 2. Proprietary Use Prevails. Use of District facilities by City during the school year must be done at a time when these activities do not interfere or conflict with any school functions. District has first preference on use of these facilities. Likewise, use of City facilities by District must be done with no conflict to City programs.
- 3. Reimbursement. Each party will reimburse the other party or pay for the replacement or repair of any damage beyond normal wear and tear resulting to the other's facilities and property during use thereof by the other party. Both parties agree to reimburse the other for any incremental and direct expenses related to the time and labor of staff needed to facilitate the

other parties' programs that are above and beyond normal schedule times and hours at an agreed upon rate. It is the intent of both Parties that neither the City nor the District will incur a financial loss from operating under this Agreement.

4. City Obligations. City agrees as follows:

- a. City agrees to follow the District Facility Use procedures (hereinafter referred to as "DFU Procedures") when requesting use of District facilities including the Aprende Ball Fields for all City affiliates. City agrees to submit all requests in a timely manner according to District's "windows of opportunity" schedule and understands that it may lose its priority position in the scheduling process should it submit its request in an untimely manner. The DFU Procedures involve the following steps at the present time:
 - i. City shall submit the Form entitled "Request for Community Use of District Facilities" (hereinafter referred to as the "Form") during the "windows of opportunity" schedule for each season. The "windows of opportunity" schedule is published by District. The "windows of opportunity" schedule establishes the time period between which all Request for Community Use of District Facilities forms must be submitted for each of three seasons (Fall, Spring, Summer).
 - ii. Once the Form is reviewed, approved, and then returned by District, City agrees to submit a detailed schedule of use to include specific dates and times of use by each City-affiliated organization within thirty (30) days of the first scheduled date of use for the season.
 - iii. City shall indicate on the Form for each season which days and times that the City wishes its affiliates to use District facilities. When scheduling the Ball Fields, District will allocate Ball Field time so that the City will have priority use on one field Mondays, Wednesdays, Fridays, and every other weekend.
- b. City understands that DFU Procedures may be revised from time to time by District, and agrees to follow any revisions, at any time, as long as City receives prior Notice of the revisions which District agrees to provide.
- c. City agrees to furnish and supply at City's sole cost and expense all expendable materials and supplies necessary in connection with City's use of the Ball Fields and facilities.
- d. City agrees to pay for the cost of all utilities incurred during City sponsored events or City approved events utilizing the Ball Fields and facilities. District will invoice City according to the Use of Facilities Summary of Fees for utility usage during city sponsored events. City agrees to pay the invoice within thirty (30) days of receipt.

- e. City agrees to reimburse District for any property damage arising out of the use of the Ball Fields and facilities by City provided for in this Agreement.
- f. City agrees that during the times City is utilizing the Ball Fields and facilities, other than during District sponsored events, City agrees to carry public liability and property damage self-insurance to fully protect itself and District, and City agrees to hold District harmless from any and all liability of any nature in connection with operation of the Ball Fields and facilities during such hours and will fully represent and defend the parties in any lawsuits arising out of these activities unless such liability was due to the sole negligence of District. City shall provide a certificate of self-insurance in a form satisfactory to District as evidence of adequate insurance coverage.
- g. City will not be charged by District for normal and routine maintenance costs. City will be charged for the incremental and direct expenses related to facility operating costs such as: custodial/ranger, opening and closing, clean-up and other personnel costs incurred by District for use of the Ball Fields and facilities per the Use of Facilities Summary of Fees except that the City agrees to pay for one hour of custodial time for cleanup each time the City or its affiliates use the Ball Fields or other facilities.
- h. City agrees to furnish and supply at City's sole cost and expense the field lights and all related ongoing maintenance for the lights on the Ball Fields.
- i. City agrees to end all City events and programs involving the Ball Fields by 9:30 p.m. and to extinguish the lighting on the Ball Fields by 9:45 p.m.
- j. City agrees to use its best efforts to ensure that participants in all City events and programs utilize designated parking spaces on the Property and do not park on adjoining streets or fire lanes.
- k. City agrees to follow the District Community Use of School Facilities Policy (KG) and Regulations (KG-R) and to require City affiliates to carry City authorized approved field requests while using Aprende Ball Fields at all times.

5. District Obligations. District agrees as follows:

- a. District agrees to keep City informed of the current DFU Procedures as they may be revised from time to time.
- b. District agrees, consistent with paragraph 4(a)(iii) of this agreement, to allocate Ball Field time equitably among community groups based upon requested community use for Friday, Saturday, and Sunday, as requested

prior to each season. When scheduling the Ball Fields, District will allocate Ball Field time so that the City will have priority use on one field Mondays, Wednesdays, Fridays, and every other weekend.

- c. District agrees to furnish and supply, at District's sole cost and expense, all expendable materials and supplies necessary in connection with District's use of the Ball Fields.
 - d. District agrees to pay for the cost of all utilities incurred during District events or approved non-school events (other than those of City) at the Ball Fields.
 - e. District agrees to provide field maintenance of the Ball Fields.
 - f. District agrees to designate a reasonable fee for a person who is a District employee to serve as a supervisor of the Ball Fields or facilities (i.e., ranger) during City usage and/or to allow City to provide city staff or league representative to serve as a supervisor. Any change in the fee needs to be submitted by District to City in writing by October 1 of each year.
 - g. District agrees that during the times District is, pursuant to this Agreement, utilizing the Ball Fields, other than during City sponsored events, District will carry public liability and property damage insurance to fully protect City, and District agrees to hold City harmless from any liability of any nature in connection with operation of the Ball Fields during such hours and will fully represent and defend the parties in any lawsuits arising out of these activities unless such liability was due to the sole negligence of City. District shall provide a certificate of insurance in a form satisfactory to City as evidence of adequate insurance coverage.
 - h. District will promptly invoice City for fees incurred pursuant to paragraph 4.g. of this Agreement.
 - i. District agrees to provide City an irrigation schedule on or before February 1 of each year for the succeeding March through October period.
 - j. District agrees to end all District and Community Events involving the Ball Fields by 9:30 p.m.
6. Continued Cooperation. City and District shall continue to search for new areas of cooperation with respect to the Ball Fields and to that end shall meet, along with interested community groups and appropriate City and District administrative officials. City shall meet often with District personnel to address any maintenance needs of the fields.
7. No Third-Party Liability. Failure to comply with terms of this Agreement shall not provide the basis of any third-party action against District or City.

8. Annual Estimate. On or before April 1 of each year, District shall prepare and forward to City the annual charges for the fiscal year to that point to assist both Parties in budgeting for the lighting of the Ball Fields and any costs associated with the Ball Fields to be paid by City pursuant to this Agreement for use by City in establishing and maintaining a budget therefore.
9. Amendment. This Agreement may be modified in writing at any time by mutual agreement of the Parties.
10. Term. The term of this Agreement is from the effective date through April 30, 2027 unless either Party gives a minimum of ninety (90) days' notice of its decision to terminate the Agreement prior to that time, with or without cause.
11. Conflict of Interest. Each Party reserves all rights that it may have to cancel this Agreement for possible conflicts of interest under A.R.S. § 38-511 as amended.
12. Assignment. Neither Party may assign, sublet, mortgage, or encumber any right or interest under this Agreement without the prior written consent of the other Party, which either Party may withhold in its absolute and sole discretion.
13. Notices. Any notice required or permitted under the terms of this Agreement shall be in writing and may be delivered personally or served by certified mail, return receipt requested, postage prepaid, addressed as follows:

To District: Kyrene Elementary School District No. 28
8700 South Kyrene Road
Tempe, Arizona 85284
Attention: Business Manager

With a copy to: Jordan Ellel, Attorney
Tempe Union High School District
500 West Guadalupe Road
Tempe, AZ 85283-3599

To City: City of Chandler
Community Services
Mail Stop 500
P.O. Box 4800
Chandler, AZ 85244
Attention: Community Services Director

With a copy to: Chandler City Attorney
Mail Stop 602
P.O. Box 4800
Chandler, AZ 85244-4800

Any notice given by certified mail shall be deemed to have been received by the other party one day after the date of mailing.

14. Governing Law. This Agreement shall be governed by the laws of the State of Arizona. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing party in such litigation or arbitration shall be entitled to recover its attorney's fees, expert witness fees and other costs of litigation.
15. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not affect the validity or enforceability of any other provisions hereof.
16. Miscellaneous. This Agreement contains the entire understanding between the Parties with respect to the subjects hereof and supersedes all prior negotiations and agreements. This Agreement may be amended only by an instrument in writing signed by the Parties. The waiver of any breach of this Agreement shall not be deemed to amend this Agreement and shall not constitute a waiver of any other subsequent breach. Headings are for convenience and shall not affect interpretation. This Agreement shall be executed in counterparts, which together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____, 2022.

CITY OF CHANDLER

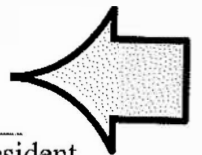
By _____
Mayor

ATTEST:

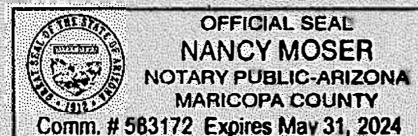
By _____
City Clerk

**KYRENE ELEMENTARY SCHOOL
DISTRICT NO. 28**

By 
Kevin Walsh, Governing Board President



**SIGN
& DATE**



*Nancy Moser
2-22-2022
I witnessed Kevin
Walsh's Signature*

APPROVAL OF THE CHANDLER CITY ATTORNEY

Pursuant to Ariz. Rev. Stat. § 11-952 I have reviewed the foregoing intergovernmental agreement between Kyrene Elementary School District No. 28 and the City of Chandler and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the other Party to enter into this

Agreement. DATED this _____ day of _____, 2022.

Kelly Y. Schwab
Chandler City Attorney



APPROVAL OF KYRENE ELEMENTARY SCHOOL DISTRICT NO. 28 COUNSEL

Pursuant to Ariz. Rev. Stat. § 11-952 I have reviewed the foregoing intergovernmental agreement between Kyrene Elementary School District No. 28 and the City of Chandler and declare this Agreement to be in proper form and within the powers and authority granted to the District under the laws of the State of Arizona.

No opinion is expressed as to the authority of the other Party to enter into this

Agreement. DATED this _____ day of _____, 2022.

By _____
Jordan T. Ellel
Tempe Tri-District Legal Counsel